IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION Nos. 8467 and 10394 of 1999

W.P.No.8467 of 1999

Between:

P.Nagaraju S/o Late P.Venkataramanappa
D.No.24/81, Mochi Street, Old Town, Ananthapur

..... PETITIONER

AND

1 Ananthapur Municipality
rep.by its Commissioner
2 The Mandal Revenue Officer
Anantapur Mandal, Ananthapur District
3 The Director of Town and Country Planning
Govt. of Andhra Pradesh, Hyderabad
4 The Andhra Pradesh Working Journalist Union
Anantapur District Unit, C/o Press Club, Near Clock Tower,
Ananthapur
5 The Ananthapur Municipal Council,
Ananthapur Municipality, Anantapur rep.by its Commissioner

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of mandamus or any other appropriate writ or direction declaring the action of the 1st and 2nd respondents in converting the land earmarked for central park in

Sy.Nos.173-3,4,7, 174-1 and 175-5 of Anantapur Municipality, Anantapur District from park into residential area and allotting the same in favour of the members of the 4th and 5th respondents as illegal and arbitrary and pass such other or further orders as the Hon'ble Court feels deem fit and proper in the facts and circumstances of the case.

Counsel for Petitioner: Mr.O.MANOHER REDDY

Counsel for Respondents 1 to 5 : Mr.G.Vijaya Kumar

Counsel for Respondents 2 and 3 : The G.P. for GAD & HMA

Counsel for Respondent 4: Mr. P.Sreenivasulu

WRIT PETITION No.10394 of 1999

Between:

T.Bharath Bhushana Reddy S/o.T.Ramalinga Reddy
6/441-D, Kovurnagar Anantapur

..... PETITIONER

AND

1 The State of Andhra Pradesh
rep.by its Secretary Municipal Administration,
Secretariat, Hyderabad.
2 The Commissioner,
Anantapur Municipality, Anantapur
3 The Chair Person,
Ananthapur Municipality, Anantapur
4 The District Collector
Collector's Bunglow, Ananthapur
5 The Mandal Revenue Officer,
Ananthapur
6 The Andhra Pradesh Union of Working Journalists.
Anantapur District Unit, rep.by its General Secretary,
T.Ramanjaneyulu

(R6 is impleaded as per Court Order dt.20.7.99

in WPMP No.17516/99)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate order or direction or writ more particularly a writ of mandamus declaring the transfer of land in S.No.173-3,4,7, 174-1 and 175-5 of Anantapur by the Anantapur Municipality to the revenue Department and the granting of the said land for house sites to the Journalists by the revenue department as illegal and void and restore the land back to the Anantapur Municipality for the use of Public purpose

in the interest of public at large and pass such order or further orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr. T.PRADYUMNA KUMAR REDDY

Counsel for Respondents 1,4 & 5.: G.P.for GAD & HMA

Counsel for Respondents 2 & 3 : Mr. G.Vijaya Kumar

Counsel for Respondent 6 : Mr.P.Sreenivasulu

The Court made the following :

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COMMON JUDGMENT:

These two writ petitions are filed by way of a *pro bono publico* litigation seeking a Writ of Mandamus declaring the action of the Anantapur Municipality and the Mandal Revenue Officer, Anantapur in converting the land earmarked for Central Park in Survey Nos.173-3,4,7, 174-1 and 175-5 of Anantapur Municipality into residential area and allotting the same in favour of the members of the Andhra Pradesh Working Journalists Union, Anantapur and the Municipal Councillors, Anantapur Municipality as illegal and arbitrary.

We will refer the parties as arrayed in W.P.No.8467 of 1999.

In G.O.Ms.No.1122 MA, dated 13-10-1998, the Government had sanctioned General Town Planning Scheme (Master Plan) in which a central park in Sy.Nos.151(P), 153(P), 154, 162 and 173 to 179 of Anantapur village was proposed. Out of this area, an extent of Ac.5.00 of land was acquired by the Anantapur Municipality under Rule 10(5) of the Layout Rules by releasing layout open space to land owners in lieu of land given by them. Land ad measuring an extent of Ac.1.00 was taken possession through gift deeds as 12½% of the land owners' land as per Government Memo No.331/H/87-6 MA, dated 24-10-1992. At present, the

Municipality is having Ac.6.00 of land in the central park area. This land meant for central park, according to the petitioners, is being allotted as residential plots in favour of the members of the Andhra Pradesh Working Journalists Union, Anantapur and the Municipal Councillors of Anantapur Municipality. To this effect, a resolution was passed by the Anantapur Municipality on 30-11-1998 and sought for approval of the Government. However, the Director of Town and Country Planning, Hyderabad - 3rd respondent - refused to grant approval in the public interest. In spite of the 3rd respondent rejecting the proposals made for conversion of the land, the 2nd respondent – Mandal Revenue Officer, Anantapur – seems to have addressed a letter in Rc.No.309/99B, dated 24-2-1999 stating that a representation was received from the Secretary of the 4th respondent-Union requesting for allotment of house sites in Anantapur town. On the said representation, as per the instructions of the Commissioner of Land Revenue, the allotment of sites to the Working Journalists was accepted and the Mandal Revenue Officer visited the spot and opined that the central park area was quite feasible and convenient for house sites purpose. However, since lands were shown in the village accounts as belonging to Anantapur Municipality, requested the Municipality to hand over the land for the purpose of assignment to Journalists. Thereafter, Anantapur Municipality passed a resolution to hand over the site to the 2nd respondent, who in turn, allotted house sites in favour of the members of the 4th respondent-union and Councillors of the 5th respondent-Municipal Council. According to the petitioner in W.P.No.8467 of 1999, he desisted the efforts of allotment of the central park area for the purpose of residential plots to the members of the 4th respondent-union and the Councillors of the 5th respondent-Municipal Council, but in vain. The action of the official respondents in allotting the central park area for the purpose of residential houses to the members of the 4th respondent-Union and the Councillors of the 5th respondent-Municipal Council is arbitrary, illegal and without jurisdiction.

Detailed counter affidavits have been filed by the 1st respondent-Municipality. It is admitted that the proposals sent to the Government for change of land use from recreational (park) to the residential was rejected. Thereafter, the Municipal Chairperson vide Note dated 31-3-1998 desired the land near RTC Bus stand to be allotted as house sites to the Municipal Councillors, Municipal superior employees and Journalists on payment of nominal cost and sought proposals to be placed

before the Council. The Council vide its resolution dated 27-12-1999 resolved that it had no objection for allotment of pattas by Mandal Revenue Officer to the journalists in Sy.Nos.173/3, 173/4, 173/7, 174/1, 175/5, 154/3 and 176/4. However, no permission was granted for construction to any of the individuals seeking allotment of plots in the said central park area. Nonetheless, during the inspection by the employees of the Municipality, it was found that some unauthorized constructions were made in the central park site by J. Ramesh Reddy, S.Visweswara Rao, T.Ramanjaneyulu and K.Ramakrishna and cases were registered against the said persons under Section 228(1) of the A.P.Municipalities Act,1965 and notices were issued for removal of the unauthorized constructions.

The 3rd respondent-Director of Town and Country Planning filed a separate counter stating that he had refused the proposals submitted by the Municipal Commissioner, Anantapur vide his letter Roc.No.11940/98/A1, dated 12-2-1999 as the site in question was needed for recreational purpose, which was derived from a large chunk of land originally meant for recreational use in the Master Plan of Anantapur. However, on the representation filed on 30-4-1999, the Department had called for detailed remarks from Municipal Commissioner, Anantapur. On receipt of remarks, the Department refused the proposals and given instructions to take action. At the same time, the Department had requested the District Collector, Anantapur vide his letter dated 20-4-1999 to initiate action to protect the municipal lands canceling the pattas issued by the Municipality without approval of the Government.

A counter affidavit has also been filed by the 4th respondent stating that although the land was acquired originally for developing a central park, but since the central park was to be developed in an extent of Ac.70.00 by spending about Rs.2.00 crores, the 1st respondent had changed its idea and decided to use the said land for commercial and residential use. There are as many as five parks in Anantapur town and this area does not suit for locating the park. Further, the 1st respondent allotted land to Lions Club for the purpose of construction of Eye Hospital from out of the said land and it is under construction. An overhead tank had also come up in the same land. Apart from that, school building was located in the very same land. Two of the members of the 4th respondent-union had constructed the first floor, but due to the interim orders of this Court, they could not complete the remaining work.

Learned counsel for the petitioners submits that once the land in question was earmarked as open space for central park, there was no authority vested in the Municipality to convert the park area or divert its use for any other purpose. It is very strange that in spite of the Director of Town and Country Planning rejecting the approval for allotment of the central park area, which was included in the Master plan, as house sites, on some pretext or other, another resolution was passed by the Municipal Council and handed over the site to the Mandal Revenue Officer for being allotted to the members of the 4th respondent-Union and the Councillors of the 5th respondent-Municipal Council. Absolutely, there is no power vested in the Municipality to adopt such a course of action without there being a valid permission from the Director of Town and Country Planning and the Government. The members of the 4th respondent-Union and the Councillors of the 5th respondent-Municipal Council have won over the 1st respondent and got the house sites in their favour, which is arbitrary and illegal. Learned counsel has drawn attention of this Court to the decisions reported in **VIRENDER GAUR v. STATE OF HARYANA** and **SRI BALAJI PARK RESIDENTS WELFARE ASSOCIATION v. VICE CHAIRMAN, VUDA & ANOTHER** and submitted that the 1st respondent has no power to convert the open space earmarked for a specific purpose into some other purpose. This is a well settled principle and there is no necessity of delving into the said decisions.

Learned counsel for the 4th respondent submits that the very writ petition is not maintainable, since the sites were allotted to individuals and not union and, therefore, no writ petition lies against the union. Here, it may be noted that, in fact, a representation was made by the Working Journalists Union. Each individual member had paid Rs.4,000/- to the Union and in all 22 applications were received by the Union. Since the application of the petitioner in W.P.No.8467 of 1999 was not accepted, he bore grudge and filed the present writ petition by way of a public interest litigation. Therefore, the petitioner has come to the Court with unclean hands. The allotments were made on examining individual cases. There is no public interest involved in this *lis*. It is nothing but a self-interested and publicity oriented litigation and requires to be rejected. Further, the matter is pending with the State Government for clearance. Therefore, it cannot be said that the allotment made in favour of the members of the 4th respondent-Union and the Councillors of the 5th respondent-Municipal Council was not wrong. These writ petitions are nothing but

misuse and abuse of the process of law. Having failed to get the allotment of the land in question, the petitioner in W.P.No.8467 of 1999 approached this Court. Further, all the affected parties were not made parties to the writ petitions. Petitioners have no grievance for Ac.6.00 of land, which is allotted to School and other purposes and they are bothered about Ac.0.66 cts allotted to the members of the 4th respondent-Union and the Councillors of the 5th respondent-Municipal Council. This itself shows that the petitioners had not approached this Court with clean hands. Even otherwise, since some of the members of the 4th respondent-Union had constructed houses in the land in question and the matter is still pending with the State Government, equities may have to be worked out appropriately.

Petitioners have admitted that a central park has been developed at a distance of 6 kilometres from the main town and merely because central park has been located outside the town, that does not mean that the area earmarked for park should be converted into a residential area. It is obligatory on the part of the 1st respondent to take proper care for development of parks.

It is true that the Municipality cannot and could not have converted a recreational area (meant for central park) to a residential area (house sites) etc., without there being proper permission as required under law. Open lands vested in the Municipality were meant for the public amenity to the residents of the locality to maintain ecology, sanitation, recreation etc. Municipality is the trustee for the proper management of the park. When the true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by the Apex Court in **SPAN RESORT CASE.** After approval of the Master plan, the lands, which are reserved for public purpose shall stand vest in the local authority, but only for the utilization by the local authority for the purpose for which such land is reserved in the master plan and not for any other purpose. Once the resolution passed by the 1st respondent and the proposal sent were rejected by the Director of Town and Country Planning, the question of allotting the same by way of another resolution to the Mandal Revenue Officer, who, in turn allotted the same to the members of the 4th respondent-Union is nothing but a dubious method adopted by the Municipality, which cannot be appreciated. Therefore, any allotment made in favour of any individual including the members of the 4th respondent-Union and the Councillors of the 5th respondent-Municipal Council will have to be declared as arbitrary and

illegal. Accordingly, we declare that the action of respondents 1 and 2 in converting the central park area, which was included in the master plan, into residential plots and allotment of the said plots in favour of the members of the 4th respondent-Union and the Councillors of the 5th respondent-Municipality is arbitrary and illegal with direction to respondents 1 to 3 to get the land restored for the purpose mentioned in Master Plan.

In the result, the writ petitions are allowed to the above extent. No order as to costs.

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(**DEVINDER GUPTA, CJ**)

17th August, 2004

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(**C.V. RAMULU,J**)

Prk

The Rule nisi in W.P.Nos.8467/99 and 10394/99 has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Seventeenth day of August Two thousand and four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary, Municipal Administration,
   Govt.of Andhra Pradesh ,Secretariat, Hyderabad.

2. The Director of Town and Country Planning
   Govt. of Andhra Pradesh, Hyderabad
3. The District Collector
   Collector's Bunglow, Ananthapur
4. The Commissioner, Ananthapur Municipality,
   Anantapur.
5. The Mandal Revenue Officer,
   Anantapur Mandal, Ananthapur District
6. The Chair Person,
   Anantapur Municipality, Anantapur

7. The Commissioner, Anantapur Municipal Council, Anantapur Municipality, Anantapur.
8. The General Secretary, The A.P. Union of Working Journalists, Anantapur District Unit, C/o Press Club, Near Clock Tower, Anantapur.

9. 2CCs to Govt.Pleader for GAD & HMA, High Court Buildings, Hyderabad (O.U.T.)

10. 2CD copies